

14 to page 21, line 10. No new matter is introduced by these amendments.

In the Office Action mailed June 18, 2001, the Examiner required restriction to one of the following inventions under 35 U.S.C. 121:

Group I: Claims 1-9, drawn to polynucleotides, classified in Class 536, subclass 23.1.

Group II: Claims 10-15 drawn to transgenic plants, classified in Class 800, subclass 3.

Applicants respectfully traverse the restriction requirement and provisionally elect the claims of group I, claims 1-4, 6-9 and 16-20, drawn to polynucleotides, and the sequence of SEQ ID NO: 1, for further prosecution.

However, Applicants submit that the Patent Office has not proven that an undue burden would be imposed by the search and examination of the entire application. Applicants submit that the complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. As MPEP 803 directs, "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

No serious burden is created for the Examiner by running a simultaneous computerized search of the nucleic acids of Groups I and II. The single search may be run in conjunction with databases such as those available at <http://www.ncbi.nlm.nih>. A single search for a particular

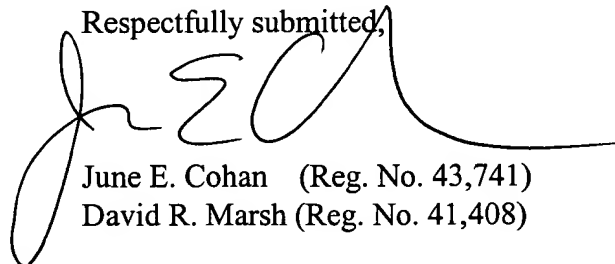
nucleotide sequence and its translation product, for example, would automatically yield results from Groups I and II without any undue burden on the Examiner.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore must be withdrawn. To facilitate prosecution, however, Applicants have provisionally elected, with traverse, Group I (originally filed claims 1-4 and 6-9, and newly added claims 16-20).

Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (202) 942-5071.

As set forth in the accompanying Fee Transmittal Form filed herewith, the Commissioner is hereby requested to charge the \$80.00 fee for the presentation of one (1) independent claim in excess of three to Arnold & Porter Deposit Account No. 50-1824 referencing matter number 16517.112.

Respectfully submitted,



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